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A REVIEW OF THE TESTIMONY IN THE BROWNSVILLE INVESTIGATION.

BY JOSEPH BENSON FORAKER, UNITED STATES SENATOR.

It is difficult to review in a brief way the thousands of pages of testimony of witnesses and the many documents which make up the record of the arduous work performed by the Senate Committee investigating the Brownsville affray; but there have been so many misrepresentations and misunderstandings that it may be well, for the benefit of the public interested in the matter and uncertain of the conclusions, to set forth a few of the leading points which were established beyond doubt by the testimony.

It was near midnight, on the night of August 13-14, 1906, that the shooting occurred in the town of Brownsville, Texas. One private citizen, a barkeeper, was killed, a lieutenant of the police was wounded and his horse shot under him, and another citizen, editor of a Spanish newspaper, claimed to have been slightly injured.

Companies B, C and D, of the Twenty-fifth United States Infantry, colored, were at the time stationed at Fort Brown. The testimony taken shows that the record of each company, down to the time of the shooting, was without any kind of stain or blemish, and that all of the officers were of high character, not only as officers of the army, but as men; that they were honorable, upright, truthful and trustworthy in every sense. The official reports of the War Department have record of two or three difficulties, of one kind or another, occurring during the forty years of service since the Twenty-fifth Infantry was organized; but it was other companies of the regiment which were identified with the troubles in every case, and not one of the three companies stationed at Brownsville has a single blot upon its record. No company in all the army has a clearer and better record for dis-

cipline and general conduct. Almost all the men of the three companies had served more than one enlistment. Their terms of service ranged all the way from five or six years up to more than twenty years. Sergeant Mingo Sanders, of Company B, had served continuously for twenty-six years; and, counting double-time allowance for service outside of the United States, in eighteen months he would have been entitled to retire on three-quarters pay, with all the rights and allowances provided by law for men who have served continuously for thirty years. He would not willingly have sacrificed this opportunity. These three companies had been with the rest of the regiment at Fort Niobrara, Nebraska, for several years prior to going to Brownsville, and they only arrived at Fort Brown on Saturday, July 28th, two weeks and two days before the shooting occurred. Even the police of Brownsville testified to their good behavior and orderly conduct during that brief period.

A battalion of white soldiers had been stationed at Fort Brown. The announcement of the change was made several months in advance, and there is a great preponderance of evidence that the people of Brownsville resented it. A great deal was said by the newspapers about discrimination against the negroes by the saloons of Brownsville, but many of them—those kept by the Mexicans, and others—did not discriminate at all; and there is no testimony whatever to show that the soldiers resented it or made any effort to go where they were discriminated against. During their brief stay, there had been three altercations with citizens of Brownsville, only two of sufficient importance even to mention; and the most careful testimony elicited concerning them only showed the animus of the citizens and a reason why they might have attacked the soldiers, but none whatever why the soldiers should attack the citizens.

Brownsville is situated on the Rio Grande, with a population of about eight thousand, five-sixths of it Mexican. Like all frontier towns, it has had its fair share—if not more—of one kind or another of violators of the law. There was abundant testimony that, prior to the arrival of the colored troops, there were many ugly expressions—among them numerous threats of violence, coupled with assertions that “the negro troops would not stay long, if they did come,” that “they would soon get rid of them,” etc. On Monday, August 13th, a story was circulated

about the town concerning an alleged assault on a woman by a negro soldier, which caused such excitement that the mayor called upon Major Penrose, in the afternoon, advising him to keep the men in quarters that night, as they might be harshly dealt with by the citizens if found in the town. Mayor Combe's testimony before the committee showed clearly that the citizens were in a mood to "shoot up" the soldiers, but there was no evidence that the soldiers had ever thought of such a thing as "shooting up" the town. On the contrary, all the testimony concerning the three altercations which did occur shows that when the soldier, Newton, was knocked down with a revolver he made no resistance; that when Private Reed was pushed off a gang-plank into the water, and reported the matter to his captain, he laughingly remarked that he "guessed he got about what he deserved"; and that while Adair, the third soldier, was not in the least at fault, he made no complaint and showed no resentment. These three men all belonged to Company C, and are all shown, beyond any possible doubt, not to have participated in any way in the shooting affray. In fact, the strongest of all the testimony showed that no one belonging to Company C could have taken part in the trouble; and there was no one connected with companies B and D who had had trouble with anybody in Brownsville. Hence there is an absence of adequate motive for any of the soldiers to have engaged in such a raid.

There were two men better able than any others to give reliable testimony as to where the shooting began. They were the sentinel on duty at the fort, and a Mexican citizen of Brownsville who was acting as scavenger for the reservation, and at work when the firing began. They were wide awake, and have given intelligent and straightforward testimony. The sentry testified that when he heard the first shots he went between barracks C and B to a point on the walk, and fired his piece three times into the air for the purpose of giving the alarm. He asserts that there were no shots fired from within the walls except the three which he fired himself. The scavenger testified that the first shots were fired from some place near the mouth of Cowen Alley, quite outside the reservation. It is wholly probable that the desultory testimony tending to establish the fact that shots were fired from within the reservation all refers to the three shots fired by the sentry.

The call to arms was sounded immediately after the first shots were fired, and Companies B and D were formed while the firing continued. Company C was not formed till five or ten minutes after it ceased, owing to difficulty in getting their guns, because a non-commissioned officer in charge of quarters refused to unlock the racks without an order; so Major Penrose had them broken open and the men fell into line. The officers testified that, while it was possible that men engaged in the shooting might have rejoined companies before verification was complete, they were all of the opinion that none did so join.

A committee of citizens was organized the next day to investigate the matter, and testimony reported stenographically was taken by them, as complete as possible, while every incident was fresh in the minds of all. The record shows that the committee proceeded and witnesses testified entirely on the assumption that the firing was the work of the soldiers, and the only inquiry was as to which of the soldiers were guilty. Not one of all the witnesses called before this committee could say more than that, hearing the shots, they looked out into a very dark night and saw a party of men who appeared to be uniformed and armed like soldiers, and that on this account they recognized them as soldiers. It does not seem to have occurred to any one to investigate upon the possibility that some of the citizens of Brownsville might have "shot up" their own town, or that it might have been done by any but the soldiers, for perfectly obvious and plausible reasons and evident motives. The case was presented to the Grand Jury of Cameron County, of which Brownsville is the county-seat, with the result that, after three weeks of investigating, they found no testimony upon which to base an indictment of anybody. No one will pretend that, in all the three thousand pages of testimony taken by the Senate Committee, there has been one iota of evidence added to strengthen a case against any of these men.

The officers of the battalion supposed at the time of the shooting that it was done by citizens. They thought so until Mayor Combe came to the fort and charged that it was done by soldiers. Even then they refused to believe the charge till the mayor returned with some exploded shells and cartridges and clips, such as were used by men of the battalion. On the strength of this they concluded that some of their

men must have done the firing, and they remained of this opinion till other facts were brought out, when Major Penrose and all of his officers returned to the conviction that the men of the battalion had nothing whatever to do with the shooting, and all of them so testified, under oath.

Major Blockson and Assistant Attorney-General Purdy were sent to Brownsville by the President to take further *ex parte* testimony. Doubtless, their reports as to what, in their opinion, the testimony established had more to do than the testimony itself in creating in the mind of the President the belief upon which he acted; for the Secretary of War and the President seemed satisfied that it had been established that certain soldiers of the battalion did the shooting, and that probably many others had knowledge of the guilty parties—in spite of the fact that every soldier of the battalion had stated, under oath, that he had had no participation whatever in the shooting and no knowledge whatever as to who did it; that, after the diligent inquiries of the officers of the battalion, not a clue had been found indicating that any one in the battalion had participated; that all of the men were present or accounted for in response to the call to arms, which sounded while the shooting was in progress; that as soon as it was light enough, the guns were inspected, and not one showed signs of having been fired the night before; that the ammunition was verified and every cartridge accounted for, not a single one was missing. It was found that the raiders were soldiers from the garrison, and the impossibility of their having kept their identity from their comrades was construed into a “conspiracy of silence,” and all of the three companies were discharged from the army without honor and deprived of the privilege of re-enlistment.

The great difficulty with the early investigations was that they all proceeded on the supposition that the soldiers were guilty. Everything in favor of the soldiers was minimized. Everything against them was magnified. Major Blockson began his report with the unqualified statement that the trouble was caused by the soldiers of the Twenty-fifth Infantry. He stated that there was no doubt that the woman assaulted was seized by the hair and thrown to the ground by a tall negro soldier—though down to the present moment there has not been a word of sworn testimony to substantiate the statement; that he

was sure the three shots which went through Mr. Yturria's house were fired from near the centre of B Company's upper back porch, etc.

When the evidence upon which these statements were made was carefully investigated, it was found insufficient to warrant the conclusions. In his testimony before the committee, General Garlington admitted that he entered upon his investigation assuming that the men were guilty, and that all he did was for the purpose of disclosing who the guilty soldiers were. At no time did it occur to him that any but the soldiers could have done it. If it were necessary to speculate beyond the question of the guilt of the soldiers, there are several suggestions which might be made as to others, with possible motives, who may have "shot up" the town.

But restricting ourselves to a review of the testimony against the soldiers, its inadequacy is clearly apparent. The night was unusually dark, yet the distances at which the eye-witnesses saw what they testified to, and recognized the raiders as colored soldiers, was all the way from thirty to one hundred and fifty feet, and in only one or two cases was there any possibility of artificial light. Experiments were made by officers of other companies, with the result, as testified to the committee, that from ten to fifteen feet away was as far as it was possible to distinguish their own men. This is an experiment which it is easy for any one to make. Simply try to recognize individuals or their clothing, or determine whether they are white or black on a dark night, from thirty to one hundred and fifty feet away, without any artificial light, and you will be instantly convinced that all of this evidence is utterly without value.

Other testimony, which of itself might have been pertinent, upon careful consideration became worse than worthless. Preciado, for example, testified the first time in a way that, if he had been supported, might easily have fixed the blame on the soldiers. But he changed his testimony entirely when under oath before the Grand Jury. He said then: "I could not see anybody in the alley, as it was dark out there and I was in the light. I heard no word spoken." A third statement, different from either, he published in his paper. It was finally and conclusively contradicted when one of the bullets fired in the volley

he describes was bored out of a post by Lieutenant Leckie, and found to be of different composition from any of the bullets used by the soldiers, and one they could not have fired from their rifles.

Major Blockson's report that the course of the bullets which struck certain houses indicated that they had been fired from the upper balcony of B barracks was flatly contradicted by Lieutenant Leckie, who was sent by General McCaskey to Brownsville to investigate this and other matters for the Penrose court-martial. He testified that the bullets *could not* have been fired from B barracks.

A lot of exploded cartridge-shells, some clips and cartridges picked up in the streets of Brownsville and brought to the fort the next morning caused the officers of the battalion to conclude that the shooting was the work of the soldiers. But, when the evidence was thoroughly investigated, including a microscopic examination of the exploded shells, they became fully convinced that the men were innocent. In other words, the first and only evidence which had led them to think that the men were guilty eventually proved conclusively to these officers, who were best of all capable of coming at the truth, that the men were innocent.

There were many suggestive sidelights upon this point brought out in the committee investigation which had great weight. There were two or three hundred shots fired in Brownsville that night according to the testimony, but all of the ammunition of the battalion was accounted for afterward, and only about forty exploded shells were found in the town and produced in evidence. Other shells, to a large number, must have been exploded and left about the streets, and there was no reason why they should not have been found. It is only reasonable to suppose that, as they would not aid to convict the soldiers, not being such as the soldier could have used, they were not produced in evidence. No shell or clip or evidence of any kind was found inside the reservation wall. At daybreak the next morning Captain Macklin found, outside the wall across the street, at the mouth of Cowen Alley, seven shells and six clips on a circular area not more than ten inches in diameter. If these shells had been fired from one of the soldiers' rifles, they would have been scattered over an area of some ten feet

in diameter. They could not have fallen as they were found; while the six clips found with them would have held thirty instead of only seven cartridges. The exploded shells were subjected to microscopic examination by order of the War Department; and, by peculiar indentations, it was determined beyond doubt that they must have been fired from four certain guns belonging to Company B; that some of the shells had failed fire once, and been returned to the rifle and fired on second trial; that nine of them bore evidence of having been twice inserted in the rifle, though with only one attempt to fire.

This testimony, which was thought for a time to show the guilt of the men, conclusively proved their innocence. One of the four guns—one from which certain of the exploded shells *must* have been fired—was shown by unimpeachable and uncontradicted evidence to have been lying, on the night of the affray, in an arm-chest in which it had been brought from Fort Niobrara, with the name of the soldier to whom it had been allotted on a slip of paper in the bore. The top of the chest was screwed down. The chest was in the store-room under a pile of baggage, and the door was locked. The gun had not been used since it was fired on the target-range at Fort Niobrara. It could not possibly have been fired at Brownsville. The shells with which it was identified *must*, therefore, have been fired on the target-range at Fort Niobrara. That the shells picked up in the streets of Brownsville were not fired there was conclusively shown through the microscopic inspection and in other ways.

The guns were new at Fort Niobrara, and were so heavily oiled with cosmoline that the action of the spring was impeded, and it was of frequent occurrence during their first use there that the cartridge failed to explode the first time and was picked up and inserted again. This difficulty was entirely overcome long before coming to Fort Brown.

It was also testified by the officers that on the rifle-range at Fort Niobrara, and only there, to their knowledge, could there have been any excuse for removing a cartridge without an attempt to fire. When the call to cease firing was sounded on the range every soldier was required to remove any unexploded cartridge from his rifle. This alone would cause the marks on the cartridge, showing that they had been twice inserted with but one attempt to fire.

Neither of these things could have occurred that night at Brownsville. If for any possible reason a cartridge had been expelled from the rifle unfired it would have fallen anywhere several feet away, and the idea is utterly untenable that on such a night and on such business a raider would have taken the time and trouble to hunt it up and reinsert it. It follows, therefore, that if the shells picked up in Brownsville were fired from certain rifles, as the microscopic investigation by the Government proved,—rifles belonging to the colored battalion,—they could not have been fired in Brownsville or later than the target practice at Fort Niobrara. But the presence of those shells in the streets of Brownsville, which had not been fired there, is suggestively accounted for by the fact that Company B took with it to Brownsville, as a part of its baggage, a box of exploded shells and a proportionate number of clips, and that this box stood open on the back porch of B barracks, where any one in passing could have helped himself.

The conclusion seems inevitable that the shells were found in the streets of Brownsville because some one, for some purpose, had taken them from the box and scattered them there on the night of the raid. Surely the soldiers would not have done this. Hence even the microscopic investigation by the War Department shows conclusively, not that the soldiers were guilty, but that they were innocent.

To find men guilty upon the evidence secured is to disregard, to violate and to reverse every recognized rule for weighing evidence. It is not only to hold these men as murderers and perjurers, but to assert that Major Penrose and all his officers, than whom there are none in the army more honorable, upright and reliable, were not worthy of credence when they testified under oath that they believed their men had told the truth and were entirely innocent. There is no ground whatever on which to justify such monstrous conclusions.

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